M. PURAVALEN, RE: VAZEER ALAM MYDIN MEERA

HIGH COURT MALAYA, KUALA LUMPUR
EUSOFF CHIN J
[PETITION FOR ADMISSION NO. 18-474-90]
13 MAY 1991

***LEGAL PROFESSION*:** *Order made under s. 36(2) of the Legal Profession Act - Variation - Appearance of pupils in open Court in the Sessions Court - Meaning of 'vary' - and in the 'best interest of the profession' - Legal Profession Act 1976, ss. 36(2), (5) - Rules of the Subordinate Courts 1980, O. 54 r. 12*

STATUTORY INTERPRETATION: *Meaning of 'vary' and 'best interests of the profession' - Legal Profession Act 1976, s. 36(5).*

This was an application by a Master, M to vary an order of Court made under s. 36(5) of the Legal Profession Act (the Act) which limits a pupil's appearance only to open Court in the Magistrate's Court.

M sought to vary the order to enable his pupil V to appear in open Court in the Sessions Court to conduct civil cases on behalf of his Master.

The Bar Council objected to this application on the ground that a chambering student cannot under s. 36(2) of the Act appear in open Court in the Sessions Court and that any variation of the order applied for must be limited to the matters stated in s. 36(2) of the Act.

Held:

[1] The order made by a Judge under s. 36(2) of the Act can be subject to variation or recission on the application by the Master, the Bar Council or the State Bar Committee under s. 36(5) of the Act which application must only be made after the Master has obtained an order under s. 36(2) of the Act.

[2] The word 'vary', in the context used in s. 36(5) should be given its ordinary meaning, which is to change, alter, modify, add to or subtract from.

[3] As a result of the amendment to the Subordinate Court Rules, the Magistrates Courts hear only criminal cases and civil cases in small claims Court.

[4] Unless the application is allowed, chambering pupils will not be afforded the opportunity of appearing and conducting civil cases in open Court in the subordinate Courts which experience is very necessary in preparing them to become full-fledged advocates and solicitors of the High Court. It is in the best interest of the legal profession that chambering pupils be given the opportunity of gaining experience in the conduct of civil suits while in training before being called to the Bar.

[5] The application to vary the order was allowed and the pupil, V may appear in open Court in the Sessions Court to conduct on behalf of M civil cases whose value or subject matter does not exceed RM25,000.

[Order accordingly.]

Cases referred to:

Re Bar Council of Malaysia [1989] 3 MLJ 379
R. v. Tonkin Ex p. Federated Ship Painters' Union [1954] ALR 777

Legislation referred to:
Legal Profession Act 1976, ss. 36(2)(b), (5)
Subordinate Courts Rules 1980, O. 54 r. 12

Other source referred to:
Words & Phrases Legally Defined 2nd Edn. Vol. 5, p. 276

For the applicant - Shafee Abdullah; M/s. Shafee & Co.
For Bar Council - Haji Sulaiman; M/s. Zain & Co.
For Selangor & Federal Territory Bar Committee - Shamsul Bahrain; M/s. Skrine & Co.

JUDGMENT

Eusoff Chin J:

This is an application under s. 36(5) of the Legal Profession Act 1976 (the Act), for a variation of the order made by this Court under s. 36(2) of the Act.

In *Re Bar Council of Malaysia* [1989] 3 MLJ 379, I held that the effect of s. 36(2) of the Act was that, at the expiration of three months, a pupil may appear to conduct any cause or matter: (i) in the chambers of the High Court; (ii) in chambers in the Sessions Courts or the Magistrate's Courts; and (iii) in Open Court before any Magistrate.

Subsequent to this decision, O. 54 r. 12 of the Subordinate Courts Rules 1980 was amended, and Practice Direction No. 4/1990 dated 29 November 1990, was issued directing Magistrates until further notice to concentrate on the disposal of criminal cases which were mounting in arrears. The result was that, except for small claims cases, effective from 1 January 1991, all civil suits in the lower Courts were filed in the Sessions Court.

This application was filed by the Master of the pupil to vary the order made under s. 36(2) of the Act so as to enable the pupil to appear in open Court in the Sessions Court to conduct civil cases on behalf of his Master. The Bar Council objected to this application on the ground that a chambering pupil cannot under s. 36(2) of the Act appear in open Court in the Sessions Court and that any variation of the order applied for must be limited to the matters stated in s. 36(2) of the Act.

For ease of reference, I quote here s. 36(5) of the Act which states:

> 36.(5) The Master of the pupil, the Bar Council or the State Bar Committee may apply at any time during the pupillage of any pupil to any Judge-in-chambers for a variation or rescission of the order referred to in subs. (2) and the Judge shall make such order on such application as in all the circumstances seems to be in the best interest of the profession.

I had in *Re Bar Council of Malaysia* stated that s. 36(2) of the Act should be read subject to s. 36(5) of the Act. By this I meant that the order made by the Judge under s. 36(2) of the Act can be subject to variation, or rescission. There must, of course be an application made by the Masters (or the Bar Council or the State Bar Committee) under s. 36(5) of the Act, which application must only be made after the Master has obtained an order under s. 36(2) of the Act.

The word 'vary' in s. 36(5) of the Act is not defined by the Act. It is the subject of some arguments before me. Tuan Hj Sulaiman for the Bar Council referred to the word 'vary' found at p. 276 of the *Words & Phrases Legally Defined* (2nd Edn.) Vol. 5, where it states:

Vary

Australia. - (Section 49 of the Commonwealth Conciliation & Arbitration Act 1904-1050, provides that the Court may set aside an award or any of the terms of an award, or "vary" any of the terms of an award.) The word 'vary' is one which no doubt in different contexts may have different meanings. In s. 49 there is a distinction drawn between setting aside an award or any of the terms of an award and varying any of the terms of an award. But the distinction made, at all events in words, between setting aside and variation, can carry no restriction upon the meaning of 'variation' beyond showing that it refers to a change in some part of the award. Probably it is enough to say that to vary the terms of the award is to change them in part whether by addition, by excision, by modification or by substitution or by qualification or otherwise.

R. v. Tonkin, Ex p. Federated Ship Painters' Union [1954] ALR 777, per cur., at p. 779.

In the context used in s. 36(5), I think the word 'vary' should be given its ordinary meaning, which to "change, alter, modify, add to or subtract from,"

Section 36(5) of the Act gives a wide discretion to the High Court to vary an order already made under s. 36(2) of the Act. The only thing that the Court has to consider is making or refusing to make, an order under s. 36(2) is whether in all the circumstances, the order is or is not "in the best interest of the profession".

The period of pupillage is to enable a pupil to receive instructions from, and training by his master, and that includes exposing him to the experience of appearing and conducting cases on behalf of his master in open Court in the Magistrate's Court after a period of three months' pupillage.

At the moment effective from 1 January 1991, for reasons already stated, the Magistrates' Courts hear only criminal cases and civil cases in small claims Courts. A pupil is allowed after three months' pupillage to appear and conduct criminal cases on behalf of his master in open court in a Magistrate's Court. The procedures to be followed in any criminal proceeding or trial in the Courts are not the same as those applicable in a civil proceeding. Can it then be said that at the end of his pupillage, a pupil has received all the necessary training to enable him to be a fit and proper person to be called to the Bar and admitted as a full-fledged advocate and solicitor of the High Court unless it can be shown that he has also had the experience of conducting civil cases in open Court while he was still a pupil? Is it conducive to the best interest of the legal profession to admit a person who has had no experience while a pupil in conducting civil cases in any open Court hearing?

Unless the application is allowed, chambering pupils will not be afforded the opportunity of appearing and conducting civil cases in open Court in the subordinate Courts which experience is very necessary in preparing them to become full-fledged advocates and solicitors of the High Court. It is, therefore, in the best interest of the legal profession that chambering pupils must be given the experience of gaining practical knowledge in the conduct of civil suits while in training before being called to the Bar.

But for the prevailing circumstances, chambering pupils would have been able to appear and conduct hearings of civil suits in open Court in the Magistrates' Courts. Now civil suits where the value of the subject matter does not exceed RM25,000 which can be filed and heard in the Magistrate's Court are filed and heard in the Sessions Courts. I think it is fair and reasonable that in allowing the application I also make the order that after the period of

three months' pupillage, the pupil Encik Vazeer Alam Mydin Meera may appear in open Court in the Sessions Court to conduct on behalf of his master, civil cases whose value or subject matter does not exceed RM25,000.

Also found at [1991] 2 CLJ 1381